IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Earthworks Group, Inc., **Plaintiff,** **v.** **A&K Properties, L.L.C.; Hanco, Inc.; Kirk Hanna; Venture Engineering, Inc.; Steve S. Powell; and, Ryan E. Harvey** **Defendants.**	**C/A No.:** **COMPLAINT** **(JURY TRIAL REQUESTED)**

Plaintiff, Earthworks Group, Inc., complaining of the Defendants herein, would respectfully show unto this honorable Court and alleges as follows:

INTRODUCTION

This is an action arising from the Defendants willful and unauthorized duplication of Plaintiff's technical drawings for the roads, lots, and infrastructure (water, sewer, road, and drainage) of *The Diamond* project, to which Plaintiff held exclusive rights.

JURISDICTION AND VENUE

1. The Plaintiff brings this action pursuant to 17 U.S.C. § 101 *et seq.*, the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*, and the Architectural Copyright Protection Act, Pub. L. No. 101-650, §§ 701-706, 104 Stat. 5089 (1990) (codified in various section of 17 U.S.C.); the common laws of South Carolina, and all other applicable local, state, and federal law.

2. This Court has original jurisdiction over Plaintiffs copyright claims pursuant to 28 U.S.C. §§ 1331, 1338(a). In addition, this Court has pendant jurisdiction over Plaintiff's remaining state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over the Defendants A&K Properties, Hanco, Inc., and Venture Engineering because Defendants do regular business in this State.

4. This Court has personal jurisdiction over the Defendants Steve S. Powell, Kirk Hanna, and Ryan E. Harvey because Defendants reside in this State.

5. Venue is proper in the United States District Court for the District of South Carolina pursuant to 28 U.S.C § 1391(b) and (c) and 28 U.S.C. § 1400.

PARTIES

6. Plaintiff, **Earthworks, Inc.** (hereinafter "Earthworks"), is a corporation duly organized and existing under the laws of the State of South Carolina with its principal place of business at 11655 HWY 707 Murrells Inlet, South Carolina, 29575; Steven Strickland is the owner and professional engineer for Earthworks.

7. Upon information and belief, Defendant, **A&K Properties L.L.C.** (hereinafter "A&K"), is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business at 2507 Forestbrook Road, Unit K, Myrtle Beach, South Carolina, 29588.

8. Upon information and belief, Defendant, **Hanco Inc.** (hereinafter "Hanco"), is a corporation duly organized and existing under the laws of the State of South Carolina with its principal place of business at 900 21st Ave N. Myrtle Beach, South Carolina, 29577.

9. Upon information and belief, Defendant, **Kirk Hanna**, is the owner, president, and/or an employee of A&K and Hanco. Defendants Kirk Hanna, A&K, and Hanco will collectively be referred to as "Hanna." Defendant Hanna is the current developer on *The Diamond* project.

10. Upon information and belief, Defendant, **Venture Engineering Inc.** (hereinafter "Venture"), is a corporation duly organized and existing under the laws of the State of South Carolina with its principal place of business at 209 Highway 544 Conway, South Carolina, 29526.

11. Upon information and belief, Defendant **Steve S. Powell** is the owner, president, and/or employee of Venture Engineering Inc. Defendant Powell is the current engineer, hired by Defendant Hanna, on *The Diamond* project.

12. Upon information and belief, Defendant, **Ryan E. Harvey**, is an agent, servant, and/or employee of Defendant Venture.

FACTS

13. On or about September 23, 2008, Plaintiff contracted with Scottie Smith, LLC, (hereinafter "Smitty's") to create a development plan for a 92 acre parcel located in the Burgess Community of Horry County on Freewoods Road, hereinafter known as "*The Diamond*".

14. The contract between Plaintiff and Smitty's included environmental, surveying, planning, and engineering services.

15. On or about February 8, 2010, the South Carolina Department of Health and Environmental Control (hereinafter "DHEC"), gave permission to Smitty's for the construction of a sanitary sewer system in accordance with the construction plans, specifications, design, calculations, and permit application that was signed by Steven Strickland, on behalf of Plaintiff, for *The Diamond*.

16. During the course of this project, Plaintiff created a land plan for the roads, lots, and infrastructure (water, sewer, road, and drainage system).

17. These plans were wholly original and were a product of a fixed medium (both paper and electronically), and were registered with the US Copyright Office within five (5) years of creation.

18. Plaintiff even took an additional step to ensure the public was on notice that their technical drawings were copyrighted, by including a reservation of rights statement on all original and copied drawings.

19. Plaintiff submitted these plans to the local and state agencies for entitlements (zoning approvals, utility permits, land disturbance permits) and had the permits in hand by March 2010.

20. During this time, the developer, Smitty's, had obtained a bank loan for the property and was planning to apply for additional funds to install the infrastructure and begin construction.

21. However, the economy was in decline and Plantation Federal, the bank that funded the land acquisition, was not able to fund the site improvements. The bank became insolvent and was sold to First Federal.

22. Smitty's loan was foreclosed on and he lost the property to First Federal.

23. On or about October 2012, First Federal sold this property through its real estate owned division to Defendant Hanna, who is now the current developer.

24. Upon information and belief, the sale from First Federal to Defendant Hanna only included the sale of land and did not include the rights to the engineering work.

25. The new developer, Defendant Hanna, contacted Plaintiff on or about October 1, 2012, and engaged in preliminary agreements about using their services to complete the

construction. Defendant Hanna was given Plaintiff's fees to continue, and requested Plaintiff's construction design plans and budgets.

26. Plaintiff sent a copy of their design plans and cost estimates for *The Diamond* to Defendant Hanna on or about October 2, 2012. Upon information and belief, Plaintiff also informed Defendant Hanna that he typically does not release the above data to third parties, but did so in good faith negotiations to solidify a contract with Defendant Hanna.

27. On or about October 2, 2012, Plaintiff clarified to Defendant Hanna, in email, that regardless of who buys the property, they will either have to pay to have the project re-designed, or retain Plaintiff as engineer of record since all development permits have Plaintiff listed as engineer. On or about October 2, 2012, Defendant Hanna replied to Plaintiff that he understood that if he retained a separate engineering firm they would need to start over.

28. On or about October 2, 2012, Plaintiff sent another email to Defendant Hanna expressing their interest to continue working on the project with them, and their goal to keep costs down in order to solidify a contract.

29. Defendant Hanna sent Plaintiff a follow up email on October 3, 2012, stating the project was funded and ready to start.

30. On or about October 10, 2012, a proposed contract was drafted between Plaintiff and Defendant Hanna (referred to in the contract as "Hanco"), for survey and engineering services.

31. Upon information and belief, Defendant Hanna also had discussions with Defendant Venture about signing a possible contract; on October 10, 2012, Defendant Harvey, on behalf of Defendant Venture, submitted a request pursuant to the Freedom of Information

Act to DHEC for "copies of all South Carolina permits (water, sewer, storm water, land disturbance, NOI, etc.) for *The Diamond*."

32. Defendant Hanna eventually decided to utilize another engineering firm, Defendant Venture, to complete to project.

33. On or about October 11, 2012, Defendant Hanna, through Defendant A&K, sent a letter to DHEC's Stormwater, Construction, and Agriculture Permitting Division, notifying them that they retained Defendant Venture as engineer of record on *The Diamond*.

34. On or about November 1, 2012, Defendant Venture also notified DHEC it was going to be the engineer of record, that Defendant Hanna decided to build the permitted plans, and Defendant Venture needed all the permits transferred into their name.

35. On or about November 2, 2012, Defendant Harvey, on behalf of Defendant Venture, submitted Plaintiffs copyrighted plans, *while retaining and exhibiting the Earthworks title block*, to DHEC to obtain all necessary permits.

36. During November 2012, Plaintiff found out Defendant Venture submitted their copyrighted plans, without authorization or consent.

37. Immediately upon discovering this information, Plaintiff put all applicable agencies on notice that their plans were protected by copyright, and they had neither authorized anyone to utilize these plans, nor did they have any record of signing over the copyright to anyone.

38. On or about November 6, 2012, DHEC emailed Defendant Powell, as point of contact for Defendant Venture, informing him the plans submitted were copyrighted materials owned by the Plaintiff and could not be accepted, and he must either submit a new set of plans or documentation that Plaintiff released the plans for his use.

39. On or about November 7, 2012, Defendant Powell, on behalf of Defendant Venture, resubmitted Plaintiff's plans and drawings, and *merely replaced the Earthworks title block with their own* – again substituting the plans as their own.

40. On or about November 14, 2012, Plaintiff received a registration with the United States Copyright office to certify their plans were, in fact, copyrighted.

41. During November 2012, Plaintiff put the new developer, Defendant Hanna, on notice that the plans submitted to DHEC were copyrighted to Plaintiff and that their use was not authorized.

42. On or about December 20, 2012, an attorney, acting on behalf of Plaintiff, sent a letter to Defendant Hanna to cease and desist from using their design plans for construction.

43. On or about December 30, 2012, Defendant Hanna responded to the above referenced letter stating the plans submitted were not prepared or designed by Plaintiff.

44. From January 2013 until July 2014, Plaintiff, relying on Defendant Hanna's representation, was under the assumption that the engineering plans were prepared by another firm and were not the work of Plaintiff.

45. However, on or about June 24, 2014, Plaintiff received some utility as-built drawings from the county engineering office for *The Diamond*, which indicated that their original design had been copied exactly by Defendants.

FOR A FIRST CAUSE OF ACTION
Copyright Infringement

46. Plaintiff incorporates all paragraphs as if stated herein verbatim.

47. Plaintiff's architectural design plans were wholly original, were a product of a fixed medium (both paper and electronically), and registered with the US Copyright Office

within five (5) years of creation. A true and accurate copy of the development plan for *The Diamond*, as submitted by Plaintiff, is attached as “Exhibit A”.

48. Plaintiff has complied in all respects with the Copyright Laws of the United States, 17 U.S.C. §§ 101, et seq., secured exclusive rights and privileges to the copyright of the development plan, and received from the Register of Copyrights a certificate of registration, dated November 14, 2012. A true and accurate copy of the certificate is attached as “Exhibit B”.

49. Plaintiff has published the development plans, and all copies made by Plaintiff, or under its authority or license, have been published in conformity with the provisions of the Copyright Laws of the United States, 17 U.S.C. §§ 101, et seq.

50. Plaintiff is, and at all relevant times has been, the sole owner of all rights, title, and interest in and to the copyrighted development plan for *The Diamond*.

51. Included in the development plan was a land plan for the roads, lots, and infrastructure (water, sewer, road and drainage).

52. Plaintiff has placed proper notices of copyright pursuant to 17 U.S.C. § 401 on all published copies of designs, which were widely available, and accessible by the Defendants.

53. Defendants and/or those acting in concert with Defendants had notice of Plaintiff’s claim of copyright to the development plans because all copies made by Plaintiff had a reservation of rights statement on the drawings, in addition to Plaintiff’s title block.

54. Defendants and/or those acting in concert with Defendants had access to Plaintiff’s copyrighted development plan because they were sent by Plaintiff to Defendant Hanna in good faith of securing a contract together.

55. Defendants had knowledge that the materials were the property of Plaintiff and, therefore, Defendants direct copying and/or submitting were willful and intentional acts, in disregard of, and indifferent to, the rights of Plaintiff.

56. In violation of the copyright laws of the United States, Defendants copied, distributed, displayed, held out as their own, and/or made available to others, designs that infringe Plaintiff's exclusive rights in the development plan.

57. Defendant's infringing activities include, but are not limited to, the copying, distribution, applying for DHEC approval, and actually beginning construction with Plaintiff's design plans.

58. The registration date of Plaintiff's copyright, November 14, 2012, was prior to the date Plaintiff learned of the actual infringement: June 24, 2014.

59. Under 35 U.S.C. § 271, Defendants have been and still are infringing, contributing to infringement, and/or inducing infringement of the development plans by continuing to hold out Plaintiff's designs as their own, and by continuing to build *The Diamond* with Plaintiff's plans. Defendants will continue to do so unless enjoined by this Court.

60. Upon information and belief, Defendants' acts of infringement have been and continue to be committed willfully and with actual or constructive knowledge of Plaintiff's copyright.

61. By reason of said acts by Defendants, Plaintiff has been, and will continue to be, seriously damaged and irreparably injured unless Defendants are enjoined by this Court from the actions complained of herein.

62. Plaintiff is entitled to actual damages, any gains, profits, or advantages of the infringer, attorneys' fees and costs pursuant to 17 U.S.C. §§ 504, 505, and for such other and

further relief as the Court may deem just and proper, to include, but not limited to, injunctive relief.

FOR A SECOND CAUSE OF ACTION
Violation of South Carolina Unfair Trade Practices Act

63. Plaintiff incorporates all paragraphs above as if stated verbatim.

64. The South Carolina Unfair Trade Practice Act ("SCUTPA") renders illegal any unfair or deceptive act or practice in trade or commerce affecting South Carolina.

65. In violation of S.C. Code Ann. § 39-5-10 et seq., Defendants have engaged in unfair methods of competition, and have committed unfair and deceptive acts in trade or commerce that directly and/or indirectly affect the people of the State of South Carolina, and which are injurious to Plaintiff and capable of repetition.

66. Defendants' unfair methods of competition include, but are not limited to:

  a. The use of unfair and deceptive negotiations while attempting to contract with Plaintiff. Specifically, asking Plaintiff for their copyrighted designs knowing they were going to contract with Defendant Venture;

  b. In copying, submitting, holding out as their own, and/or constructing *The Diamond* based on Plaintiffs copyrighted plans because:

    a. Defendants have no authority to use Plaintiff's designs;

    b. Defendants know that they have no authority to use, hold out, and/or construct such designs without Plaintiff's consent; and,

    c. In making false, misleading, and/or fraudulent representations to Plaintiff and to DHEC.

67. Defendants' deceptive and unfair acts affect the public interest, have the potential for repetition, and/or have been repeated in trade or commerce, including in the State of South Carolina.

68. Defendants' deceptive and unfair acts constitute a willful and/or knowing violation of the laws.

69. As a direct and proximate cause of the unfair and deceptive acts and practices taken by Defendants, Plaintiff has suffered reputational, financial, and other harm.

70. Plaintiff seek all damages and other such recoveries available under the law from a party intentionally committing unfair trade practices, including, but not limited to, statutory treble damages and attorney fees pursuant to S.C. Code Ann. §39-5-140.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANTS VENTURE, POWELL, AND HARVEY
Tortious Interference with Prospective Contractual Relations

71. Plaintiff incorporates all paragraphs above as if stated verbatim.

72. Plaintiff had a reasonable expectation it would maintain and/or enter into contracts and/or business relationships, and derive revenue from a relationship with Defendant Hanna, who communicated their interest in establishing a prospective contractual relationship with Plaintiff.

73. This relationship is evidenced by Defendant Hanna's written and oral negotiations, and a draft contract between parties to perform surveying and engineering services for *The Diamond*.

74. Upon information and belief, Defendants Venture, Powell, and Harvey knew of these prospective business relations and intentionally, unjustifiable, and with improper purpose interfered with Plaintiff's business and/or contractual relations.

75. As described herein, this interference caused Defendant Hanna to breach and/or terminate the prospective contract, business relationship, and/or expectancies with Plaintiff.

76. Such breaches were procured by Defendants without privilege and with full knowledge of Plaintiff's exclusive rights to their design.

77. As a direct and proximate result of Defendant's interference, Plaintiff has been injured, will continue to be injured, and will be directly deprived of any future revenues deriving from the opportunity, which instead will accrue to Defendants.

FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANTS A&K, HANCO, AND HANNA (individually)
Breach of good faith and fair dealing

78. Plaintiff incorporates all paragraphs above as if stated verbatim.

79. Implied within every contract, intent to contract, and/or preliminary negotiation is the duty to use good faith and fair dealing.

80. Defendants A&K, Hanco, and Hanna owed Plaintiff a duty to act honestly, without taking unfair advantage, and refrain from doing anything which would render performance of the contract impossible by any act of his own during their discussions pertaining to their preliminary agreement.

81. Defendants A&K, Hanco, and Hanna breached their duty by interfering with, failing to cooperate, and/or deceiving Plaintiff in performance of the anticipated contract. More specifically, the above Defendants' breach includes, but is not limited to:

a. Defendants A&K, Hanco, and Hanna inducing Plaintiff to send its design plans to save money and time;

b. Defendants A&K, Hanco, and Hanna leading Plaintiff to believe they would contract with them on *The Diamond*, when in fact they knew they were contracting with Defendant Venture; and/or,

c. Defendants A&K, Hanco, and Hanna providing Plaintiff's design plans to Defendant Venture when they knew or should have known they would submit them to DHEC as their own.

82. Defendants' A&K, Hanco, and Hanna acts constitute a willful and/or knowing violation of the law.

83. Plaintiff has suffered reputational, financial, and other harm caused by the above Defendants' intentional breach of good faith and fair dealing.

84. Plaintiffs seek all damages and other such recoveries available under the law.

FOR A FIFTH CAUSE OF ACTION AS TO DEFENDANTS HANNA (individually), A&K PROPERTIES, AND HANCO
Intentional Misrepresentation

85. Plaintiff incorporates all paragraphs above as if stated verbatim.

86. On or about October 2012, Defendants Hanna, A&K, and Hanco represented to Plaintiff that they would use good faith in negotiating a contract to hire Plaintiff as the engineer of record for *The Diamond*.

87. These material representations were false, and Defendants Hanna, A&K, and Hanco knew and/or should have known the falsity of these statements at the time they were made, or that they were made recklessly and without regard for their truth.

88. Defendants Hanna, A&K, and Hanco, by and through their agents, had a pecuniary interest in making such representations.

89. Defendants Hanna, A&K, and Hanco intended Plaintiff to act upon these material representations and send their design plans to Defendants.

90. Upon information and belief, Defendants Hanna, A&K, and Hanco immediately breached and/or terminated their relationship after receiving Plaintiff's copyrighted design plans.

91. Plaintiff had the right to rely upon, and did rely upon, the material representations of Defendants Hanna, A&K, and Hanco, and would not have sent its plan had it known otherwise.

92. Defendants Hanna, A&K, and Hanco intentionally, willfully, and/or knowingly defrauded and misrepresented to Plaintiff.

93. Plaintiff was ignorant of the falsity of the misrepresentations and justifiably relied upon Defendants misrepresentations to its detriment, thereby causing them to suffer serious financial damages.

94. As a result of Defendants Hanna, A&K, and Hanco violations of the duties and standards, Plaintiff has suffered and will continue to suffer damages and seeks all damages and other such recoveries available under the law.

FOR A SIXTH CAUSE OF ACTION HANNA (individually), A&K PROPERTIES, AND HANCO
Negligent Misrepresentation

95. Plaintiff incorporates all paragraphs above as if stated verbatim.

96. As set forth above, Defendants Hanna, A&K, and Hanco, and their agents, made one or more above representations to Plaintiff.

97. Defendants Hanna, A&K, and Hanco, by and through their agents, had a pecuniary interest in making such representations.

98. Defendants Hanna, A&K, and Hanco intended for Plaintiff to rely upon Defendants' representations

99. Defendants Hanna, A&K, and Hanco made the false representations in the course of Defendants businessm profession, and/or employment.

100. Defendants Hanna, A&K, and Hanco owed a duty of care to Plaintiff to see that truthful information was communicated to them.

101. Defendants Hanna, A&K, and Hanco breached this duty to Plaintiff by failing to exercise due care.

102. Plaintiffs justifiably relied upon the representations.

103. Plaintiffs suffered damages as a direct and proximate result of reliance on the representations.

104. Plaintiffs are entitled to actual, incidental, consequential, and punitive damages, joint and severally against Defendants.

FOR A SEVENTH CAUSE OF ACTION HANNA (individually), A&K PROPERTIES, AND HANCO
Fraud

105. Plaintiff incorporates all paragraphs above as if stated verbatim.

106. Defendants Hanna, A&K, and Hanco knew at the time that they made the false representations and concealed the material facts alleged above that such representations were untrue.

107. Defendants Hanna, A&K, and Hanco acted with the intention to deceive and mislead Plaintiff, and to fraudulently induce Plaintiff to send their plans for *The Diamond* to them for Defendants own benefit and use.

108. Plaintiffs justifiably relied on Defendants Hanna, A&K, and Hanco false representations and material omissions, and thereby sent their plans to Defendants.

109. As a direct and proximate result thereof, Plaintiffs suffered and continue to suffer serious financial damages.

110. As a result of their intentional and/or willful conduct, Defendants Hanna, A&K, and Hanco are liable to Plaintiff for punitive damages and all other such recoveries available under the law.

WHEREFORE, Plaintiff requests a jury trial and prays judgment against the Defendants, both jointly and severally for TREBEL STATUTORY, ACTUAL, CONSEQUENTIAL and PUNITIVE DAMAGES, in addition to INJUNCTIVE RELIEF, together with COSTS of this action and ATTORNEY FEES and for such other and further relief as this Court may deem fit, just and proper.

[Signature Page to Follow]

s/Aaron S. Jophlin
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